89-91

Supreme Court, U.S.
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CHARLES M. AND MITSUKO ANDERSON,

Petitioners

vs.

PARCOM, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

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QUESTIONS PRESENTED FOR REVIEW

QUESTION I: STATUS AS A WIFE ONLY

Whether a judgment that enforcement of a mechanics' lien against Petitioners' residence amounts to an unconstitutional taking of private property without due process or consent in violation of the 14th Amendment, under conditions wherein the Petitioner/wife (one spousal Tenants by the Entirety owner of the subject residence) was not a party to the underlying contract; did not authorize the work; had no contractual connection with the supplier or installer of carpet in the subject residence; had no duty to repudiate her husband's contract with them under his own business company name; did not ratify said contract; did no act of estoppel; did no act of deception, inducement, misleading, or promising; was not a principal in agency with her husband in said contract; did not par-

ticipate in any manner with said contract or its execution; and had no knowledge of said contract or its terms or status.

QUESTION II: AGENCY (On Behalf Of)

Whether a judgment that enforcement of a mechanics' lien against Petitioners' residence amounts to an unconstitutional taking of private property without due process or consent in violation of the 14th amendment, under conditions wherein the trial court stated in a letter opinion (incorporated into final order) that the judicial determination of enforceability depends inherently upon the trial testimonial "admission" of Petitioner/wife (one spousal Tenants by the Entirety owner of the subject residence) of agency ("...authorized...on behalf of...") of her husband with her as principal, when the trial court, at later motion and be-

fore entry of final order, determined and ruled that no such testimony occurred, there was no agency, and indeed agency had nothing to do with his enforceability decision and letter opinion.

QUESTION III: LIEN FOUNDED IN CONTRACT

Whether a judgment that enforcement of a mechanics' lien against Petitioners' residence amounts to an unconstitutional taking of private property without due process or consent in violation of the 14th Amendment, under conditions wherein the trial court stated in a letter opinion (incorporated into final order) that the Virginia law on mechanics' lien enforceability is that the underlying contract has nothing to do with the creation or attachment of a mechanics' lien on the subject residence owned in Tenants by the Entirety by Petitioners/husband and wife

and also stated that the fact that Petitioner/wife had no "...underlying contractual obligation..." is not "...fatal to the enforcement...,"but the only requirement being a consenting owner/wife with "consent" coming from "acquiescence,"i.e. failure to repudiate under conditions of total non-involvement and lack of knowledge.

QUESTION IV: EQUITY AND OPINION

Whether a judgment that enforcement of a mechanics' lien against Petitioners' residence, owned in Tenants by the Entirety by spousal Petitioners, amounts to an unconstitutional taking of private property without due process or consent in violation of the 14th Amendment under conditions wherein the trial court stated in letter opinion (incorporated into final order) that the husband t/a his own

company can't make "...all necessary steps to insure completion of the construction ..." and "...signs underlying contract..." with the wife "standing by to get the benefit" and charging her property on that basis alone.

QUESTION V: BIAS & VA. CODE §54-142

Whether Petitioners received a fair hearing, due process, and equal protection of the law by an unbiased and unprejudiced court under conditions wherein the trial judge had prior to and during hearing this cause been party to intense and continuous hatred for Petitioner/husband Charles M. Anderson, multiple acts of prejudicial conduct against him, and clear conflict with him, which prejudice carried over from Petitioner/husband to Petitioner/wife in violation of the 14th Amendment.

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OPINIONS BELOW

The following orders and opinions are in the Appendix: Finding at Trial, Trial Judge Letter Opinion, Trial Judge Opinion at Motion on Agency in re his Letter Opinion, Final Order, Trial Judge Agreement with Appellant's Statement of Facts, Virginia Supreme Court's Denial of Petitioners' Petition for Appeal, Virginia Supreme Court's Denial of Petitioner's Petition for Reconsideration.

JURISDICTION

The judgment sought to be reviewed was dated and entered on March 25, 1988 incorporating letter opinion dated November 13, 1987. A Petition for Appeal was denied on March 20, 1989 and a Petition for Rehearing was denied April 21, 1989 by the Virginia Supreme Court. The jurisdiction this Honorable Court is invoked pursuant

to the specific provisions of 28 U.S.C. 1257 (3). Due process was argued at trial, post-trial motion, and appeal.

CONSTITUTIONAL PROVISIONS

Constitution of the United States:

Article XIV, Section 1
(Fourteenth Amendment)

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (argued at trial & in letter opinion)

STATEMENT OF THE CASE AND FACTS

Complainant filed a Bill of Complaint to Enforce a mechanics' lien against real property to which carpet had been installed. Petitioner Charles Anderson testified that he was not agent for his wife,

that he did the subject project as his own enterprise under his long-established sole proprietorship AA Engineering, that his wife had nothing to do with it or knowledge of it, that he told Respondent president Ishaq during contract negotiations that he (Anderson) was operating as Charles M. Anderson t/a AA Engineering on a "spec" house, and that the contract was signed as such.

Petitioner Mitsuko Anderson testified that she had nothing to do with the project, that she spoke to no one at the complainant company, that she knew nothing of the activities or status of any carpet installers or Respondent in any way, that it was her husband's business and not hers, that her husband did not do any of these activities for her or on her behalf, and that she made no contribution to a house plan, room arrangement, equipment,

selections, money to project, management, or development of ideas. Petitioners argued 14th Amendment due process.

Respondent president Paravoiz Ishaq testified (but only after being impeached by his deposition) that his contract was with Charles M. Anderson t/a AA Engineering, that he never talked to or knew of Petitioner Mitsuko Anderson, that Petitioner Charles Anderson told him from the beginning that he was building the house as a "spec" house, that no one ever reported to him anything concerning Petitioner Mitsuko Anderson, that he and Petitioner Charles Anderson contracted for 500 square yards of carpet and pad installed, and that he recommended the grade, that he never knew of Petitioner Mitsuko Anderson until he contacted his attorney three months after completion of the contract to file a mechanics'lien, and that he had no claim against Petitioner Mitsu-

ko Anderson.

Respondent witness and carpet installer Samuel Whitmire testified (but only after being impeached by his deposition) that he installed certain dimensioned areas of carpet and pad, that the subject house temperature inside during installation was about 40°F., that he had no conversations with Petitioner Mitsuko Anderson, that no one ever reported to him any conversations with Petitioner Mitsuko Anderson,and that he took instructions from Petitioner Charles Anderson only.

The trial judge made an oral finding at conclusion of trial October 8, 1987 that Petitioner Charles Anderson personally owed Respondent for 314 square yards of carpet and pad installed, the property was owned as Tenants by the Entirety by Petitioners Charles and Mitsuko Anderson, no judgment could be had against

Mitsuko Anderson, and took the matter of enforceability of the lien under advisement. Trial judge issued a Letter Opinion dated November 13, 1987 ruling in favor of enforceability. Defendants moved for reconsideration citing the errors and inconsistancies of the Letter Opinion with the facts, whereupon trial judge ruled on January 21, 1988 that Petitioner Mitsuko Anderson never testified there was agency, but specifically had testified that she did not rely on her husband for anything concerning the subject property or subject work, that there was in fact no agency, and that "My decision is not based on agency. It's not connected with the theory of agency."

On May 12, 1988 Petitoners moved for dismissal of the cause and relase of the lien founded in Respondent's failure to have a contractors license under Virginia

Code §54-142 D. and failing to give substantial performance (the court having ruled 63% of contract performance had been given), whereupon trial judge stated, "You testified that you got all you asked for," whereupon Petitioner Charles Anderson moved on May 26, 1988 for an order memorializing that false fact and false law causing trial judge to say, "I didn't say that, but I'll write you a letter giving you my decision," without ever doing so even though demanded and complained of by Petioner Charles Anderson on multiple occasions.

Final order incorporating Letter Opinion was entered March 25, 1988. Petitioners appealed. Petitioner Charles Anderson filed his Statement of Facts under Virginia Rule 5:11 which was agreed with my trial judge in writing on June 27, 1988. Petitioner Mitsuko Anderson

filed trial transcripts of testimony of Charles Anderson, Mitsuko Andrson, Paravaiz Ishaq, and Samuel Whitmire.

Petitioners filed their Petition for Appeal whch was denied on March 20, 1989 and filed their Petition for Reconsideration which was denied on April 21, 1989 by the Virginia Supreme Court.

Additional facts are that:

(1) Petitioner/husband Charles M. Anderson t/a AA Engineering contracted in writing with Respondent carpet supplier and installer to provide and install 500 square yards of carpet and pad in a house under construction being built by himself t/a AA Enginering, his sole proprietorship, as a "spec" house for sale. Respondent never knew of Petitioner/wife, one owner of this Tenants by the Entirety property, nor did Petitioner/wife have any knowledge, contact, or participation

with Respondent or in the subject contract or its execution or participation in her husband's activities.

(2) Respondent sued both spousal/owner Petitioners and admitted no contact or involvement of any kind with or by Petitioner/wife (i.e., no reliance, no fraud, no inducement, no ratification, no estoppel, no agency, no authorization, no consent, no assent, no acquiescence), that the subject real estate was owned by Petitioners as Tenants by the Entirety property, and made no claim against Petitioner/wife except to allege her status as a wife and Tenants by the Entirety owner, but demanded enforceability of the lien arguing only that Virginia Code, Title 43 mechanics' lien law causes the lien to go to the land without regard to anything else.

(3) The trial judge, already having deeply involved himself in conflict, ana-

mosity, and personal litigation with Petitioner Charles Anderson, intentionally frustrated Petitioners' discovery by denying them opportunity to be heard at motions, telling them to be quiet so that they couldn't speak, refusing to read their filed arguments, and lying of facts and law to deny all motions and assist Respondent, but still proceeded to try the case on October 6, 1987 over Petitioners' strenuous objections and motions for his recusal and most emphatic statements and warnings that he could not possibly be impartial to these Petitioners. (14th Amendment due process "taking" raised)

(4) Petitioner Charles Anderson submitted his Statement of Facts to trial judge for endorsement or correction with notice to Respondent in accordance with Virginia Supreme Court Rule 5:11. Respondent refused to argue, respond, or offer correction, sending only a young lawyer

who said he knew nothing of the case. Trial judge announced from the bench his endorsement (agreement) with the Statement of Facts which essentially agrees with his typed endorsement (agreement) signed and entered June 27, 1988. Whereupon, in spite of trial judge's agreement with Petitioner Charles Andersons's Statement of Facts, devastating to the trial judge and the conduct of the whole trial, the Virginia supreme Court ignored it upon Petitioners' Petition for Appeal. That Statement of Facts is adopted in whole and incorporated herein and is in the Appendix. (all cited law was presented at trial) All objections and exceptions were noted.

REASONS FOR GRANTING THE WRIT

This case provides the Court an opportunity to make a clear, objective statement of the law regarding enforcement of a mechanics' lien, e.g., "Virginia

Code Title 43 authorizes mechanics' liens only upon the interest in the land of the person expressly authorizing the work," "Where a Tenants by the Entirety in the fee simple is once created, the property is completely immune from the claims of creditors against either husband or wife alone," "Where property is held by husband and wife as Tenants by the Entirety, neither by their own individual act can subject the property to mechanics' lien," "Where property against which claim of lien for materials is filed is owned by husband and wife as tenants by entireties, plaintiff is not entitled to have lien enforced against the property if wife was not a party to the contract pursuant to which materials were furnished," wherein a contract is made by a Tenancy by the Entirety owner/husband concerning the subject realty under his own business

company name, without knowledge, estoppel, agency, express authorization, ratification, participation, deception, misleding, contact, consent, or anything by the owner/wife, as concerns 14th Amendment due process rights and unconstitutional taking of private property, whereas a few states allow taking upon minimal spousal involvement in the contract, most states deny enforcement absolutely, but this trial judge, although being of an absolute proscription state, ignors its own clear law and inserts therefore, for these Petitioners, "The mechanics' lien statute was not meant to be frustrated in its enforcement against estates by the entireties solely because only one spouse signs the underlying contract, when the other spouse authorizes, consents to, and stands to benefit from the work performed by the contractor un-

der the contract," and speculates with bias as to motives and intent not in evidence, and this in spite of additional clear Virginia law, "The very existence of a mechanics' lien on land, as well as the jurisdiction of the court to enforce it, depends upon statute and not upon equitable or ethical rules, so that neither the conscience of the chancellor nor the length of his foot can supplement the statute and vest the court with any jurisdiction except that which is based upon the provisions of this chapter fairly constructed," and in spite of its total inconsistancy with the facts. Feuchtenberger infra.

The Questions Presented for Review will next be taken up in turn with reference to the specific case citations.

RE QUESTION I (Status Pleading as Wife/Owner)

> Virginia Code Title 43 authorizes mechanics' liens only upon the interest in the land of the person expressly authorizing the work. Feuchtenberger v. Williamson,et al, 137 Va. 578 (1923)
>
> Where a Tenants by the Entirety in the fee simple is once created, the property is completely immune from the claims of creditors against either husband or wife alone. Vasilion v. Vasilion, 192 Va. 735 (1951).
>
> Where property is held by husband and wife as Tenants by the Entirety, neither by their own individual act can subject the property to mechanics' lien. Freeman contracting Co. v. Lefferdink, 419 S.W.2d 266 (Md. 1967)
>
> Where property against which claim of lien for materials is filed is owned by husband and wife as tenants by entireties, plaintiff is not entitled to have lien enforced against the property if wife was not a party to the contract pursuant to which materials were furnished. H&B Co. of Statesville v. Hammond, 195 S.E.2d 58 (N.C. 1973)

The law is clear, overwhelming in its clarity and in agreement with the vast

majority of all the states! The trial court refused to recognize what Judge J. Howe Brown ruled on July 17, 1985 in Smitty's Lumberteria v. Anderson, et al, Fairfax Circuit Court, Chancery No. 90299, citing the same four cases as above in a final order (copy in Appendix), which was for trial judge a precedent on the same mechanics' lien issues on the same property for these same Petitioners, and adopting the Maryland and North Carolina cases as Virginia law, viz., Feuchtenberger's requirement to avoid an unconstitutional taking without consent and due process is an express authorization or consent. See also Brown, bot. p. 18, order presented at trial.

Petitioner/wife Mitsuko Anderson had no involvement in the contract. There was no estoppel, authorization, or agency. She had no knowledge of Respondent nor they of her. She was only an owner/wife.

This total non-involvement in any form was agreed with by trial judge in his June 27, 1988 endorsement (agreement, p.61) with Petitioner Charles Anderson's Statement of Facts of May 17, 1988 (in Appendix, see ¶¶ 5 - 9,11,24,25) and is part of the trial transcript record filed on appeal and is supported by the testimony of all witnesses on both sides on the subject.

The trial judge said at the bottom of page 3 of his Letter Opinion, "...when the other spouse ... stands to benefit from the work performed..." Benefit is not the standard nor the law in Virginia nor elsewhere. The mere fact that the building adds value to the land on which it stands is not enough. The mere occupancy of the building is not enough to show acceptance. See Warren v. Goodrich, 133 Va. 366 (1922). Also where a structure is permanently affixed to real property

belonging to an individual without her consent or request, she cannot be held responsible because of its subsequent use. It becomes hers by being annexed to the soil, and she is not obliged to remove it, so as to incur an obligation to pay for it, merely because she has not chosen to tear it down, but has seen fit to use it. See Sutton v. U. S. 256 US 575, 41 S Ct 563. See also Caldwell v. Eneas, 9 SCL (2 Mill Const) 348. The trial judge was wrong.

Further argument of law on Virginia, other states, and federal standard for wife follows in the section immediately next.

RE QUESTION II (Agency) (On Behalf Of)

Judge Brown's July 17, 1985 order (p. 16 herein) said that in order to charge wife's interest in the subject realty, there must be a consent, express authori-

zation, agency, or estoppel. Trial judge's Letter Opinion said, "Mr. Anderson authorized Complainant's performance on behalf of the indivisible interests of the Andersons together..." (emphasis added) at his page 3. By "authorized...on behalf of" trial judge means agency. All witnesses for both sides denied agency. Upon trial judge's publication of the above statement totally inconsistant with the facts and law, Petitioners moved the court on January 21, 1988 for reconsideration on the issue of enforceability and called the trial translator to the stand to testify as to the falseness of trial judge's statements in his Letter Opinion about Petitioner Mitsuko Anderson's testimony, whereupon the trial judge ruled against agency and "acting on behalf of" and said (in Appendix, also see ¶¶ 11 adn 13 of Statement of Facts in Appendix):

"It appears to me that the case which has been asserted for reconsideration is, primarily, based upon an agency theory. And all of the arguments or many of the arguments that have been made here relate to the fact that there was a contract and that Mrs. Anderson was not the agent of her husband or had not joined in with him in this endeavor to build this house. That is not what the decision that I made is about. My decision is not based on agency. It's not connected with the theory of agency. (emphasis added) It is connected with the fact that improvements were made to this house, and they were made by Mr. Anderson. And connected with that is a statement made in my opinion and my opinion is, from the testimony of Mrs. Anderson, is that that testimony established that she knew that Mr. Anderson was doing this work. That she, in fact, acquiesced and assented to the performance of this work. Particularly, in this case, the carpet. That's what we are talking about, specifically. (emphasis added) And that she was willing to accept the benfits of the enhanced value to her property. Further, she was a tenant by the entirety. She knew she had an ownership in this property." (transcript 1/21/88, pp. 1-34)

Note also that he changed his mind on this subject only after attempting to frustrate the translator and discovering

that he couldn't shake her from the truth.

The Letter Opinion, obviously being strained for a pre-determined conclusion (note over five weeks from trial ruling to Letter Opinion on a straight-forward, simple, clear, well defined legal issue), was now gutted of an essential element, agency, and was without any meaning whatsoever whereas there-to-fore it was just a strained lie on the facts and law and obviously so on its face to any casual reeader.

Note also the following items in trial judge's January 21, 1988 revelations. He still clings to"acquiesced" and "assented." That's not the fact. That's not the law. She did nothing. She knew nothing. But even if she had, that's not the law as the discourse on the law below will reveal. But she didn't! Herein lies trial judg-'es strain. He just couldn't let this one

go. The relevant subject here, just as much as any other, is his hatred for Petitioner Charles Anderson. (see Question V (Bias), page 49 herein) Also note he excludes the construction of the house from consideration and includes in this cause only the carpet installation. Thus his "assent" would relate only to carpet and this Respondent and that relationship is of record and clear, uncontroverted, and even supported by Respondent as totally consistant with that as reported by Petitioners at trial.

Contributing money to the project, creating plans, providing ideas, ordering materials, receiving materials, giving directions, recepting for materials, etc. are some of the kinds of activities the law considers to estop a non-contracting (non-ordering, non-expressly authorizing, non-consenting) spouse from defending her

interest in Tenants by the Entirety property against mechanics' lien created by acts of the other spouse. Generally these are not sufficient to allow enforcement as the following discussion of the law reveals. What is required is a contracting by the wife, consent, or express authorization, estoppel, or agency. None of either group are present in this cause.

The following discussion is found in American Jurisprudence on mechanics' liens.

36 Am Jur Mechanics' Liens §106 says,

> "....in determining whether one spouse can make a contract which will subject the estate to a mechanic's lien, the question is simply whether, under the terms of a particular statute providing for a mechanics' lien, an estate by entirety is of such a quality, considering its characteristics, that it will become subject to a mechanics' lien by the act of one of the spouses."

That brings us to what the Virginia statute, Virginia Tenants by the Entirety title, and Virginia case law are as to their "terms" and "characteristics." One way to state Virginia law is that it is an "absolute prohibition" state, one spouse being absolutely prohibited from encumbering the property absent the express consent of the other spouse. This is supported by Feuchtenberger, Vasilion, Freeman Contracting Co. and H&B Co. of Statesville (p. 15 herein), clearly indicating the absollute necessity for the wife to be a party to the contract. This is the same ruling of Judge Brown on July 17, 1985. (pp. 16&18 herein)

Trial judge cites 53 Am Jur 2d Mechanics' Liens §142. That section says, assent by knowledge, failure to object, and conduct is sufficient to charge the other spouses's interest and cites two Indiana

cases and one Maryland case. The facts here are no knowledge, thus no opportunity to object, and no conduct. This was the testimony of both sides. But still that's not the Virginia law. See Feuchtenberger, Vasilion, Freeman Contracting Co., H&B Co. of Statesville (page 15 herein) and Milligan v. Alexander 72 W.Va. 615, P. Delany & Co. v. Duvoli 278 NY 328, Murray v. Zemon 402 Pa 354, and Jobe v. Hunter 165 Pa 5. See also 53 Am Jur 2d §143, p. 664 (1970). See also 75 A.L.R.3d, Annotation, Estate by Entireties - Individual Debt, p. 1188. He twisted 53 Am Jr 2d 142.

As to the standard for enforcement being a large number of instances of a large number of activities, there is an avalanch of law applicable to Virginia as an "absolute prohibition" state (p. 24):

It is generally held that the mere knowledge of a married woman that her hus-

band is making improvements upon her property is insufficient to establish the fact that he is acting as her agent. Nor - her mere failure to dissent from the proposed transaction import an intention to bind her real estate (Feuchtenberger). A number of circumstances have been held to disprove the agency of the husband as, for example, the facts that the claimant did not know that the materials in question were to be used on the wife's property; that the claimant did not know that the wife owned the land on which the improvements were made, that the wife had no knowledge that the husband purchased materials on credit, took no part in the planning, or construction of the building, suggested no alterations during progress of the work, contributed no money toward the improvement, gave no directions as to the work, or took no part in the purchase of

the materials used; and that the husband signed the contract and treated the project as his own. Other circumstances which have been held not sufficient to prove the husband's agency are the facts that the wife owned the real estate on which the improvements were made, that the house on which the improvements were made served as a family residence, that the wife said that her husband wanted the work done and that she would see them paid, as well as that if her husband were suited all would be suited. Of course, where the credit is given to the husband alone, no mechanics' lien can attach to the wife's interest. See Milligan v. Alexander, 72 W. Va. 615. 36 Am Jur Mechanics' Liens, §101. Note the relevance and significance!

Comparing the above law for Virginia with the facts of this case: Petitioner Mitsuko Anderson had no knowledge, cont-

act, authorization, agency, estoppel, ratification, duty or opportunity to repudiate, involvement -- nothing! while the contract was with Petitioner Charles M. Anderson t/a AA Engineering building a"spec" house -- all admitted to by Respondent!

Additionally, there are a number of circumstances from which the agency of the husband to contract for his wife may be inferred or implied. Among these are the giving by the wife of personal directions to the claimant as to part of the work; participation in conversations between her husband and the contractors relative to the work during the time it was being done; the furnishing of money to be paid on the building or improvement; the fact that the husband had no interest in the particular piece of property upon which the improvement was made; the delivery of most of the materials directly to the wife; and the

joining of the wife with the husband in the erection of buildings. See Jobe v. Hunter and Milligan v. Alexander, supra, 36 Am Jur Mechanics' Liens §100. Keeping in mind that Virginia is an "absolute prohibition" state, again compare this Virginia law with the facts of this cause.

Silent acquiescence (a key word in trial judge's strained, contrived Letter Opinion) will not estop a wife from setting up her title in defense of an action brought to enforce a mechanics' lien. A clear, affirmative act of consent is required. See Milligan v. Alexander, Jobe v. Hunter, P. Delany & Co. V. Duvoli, Murray v. Zemon, supra, and Hoffman v. Mc Fadden 56 Ark 217, Marshall v. Hall (Mo App) 200 S.W. 770.

Certainly she is estopped to assert her title for the purpose of defeating the lien arising out of a contract with her

husband alone, if she connives at any false representations made by him as to the ownership of the property. It has been held also that the mere fact that a wife stands by with knowledge that work is being done on her property by one hired by her husband will not estop her to assert her title to the property and to resist the enforcement of a mechanis' lien where nothing has been done to mislead the claimant as to the ownership of the property. Again compare the law to the facts of this cause. All evidence from both sides clearly shows there was no misleading, inducement, or false representations. A woman whose title appears on the records is not estopped from contesting a mechanics' lien on her property by the fact that she knew of the erection of a building, where the work was done under a contract with her husband, who had promised her

that he himself would pay for it, although the contractor supposed the husband was the owner. In the case at hand, there is no evidence as to what the complainant thought about the ownership of the property, but even if he had thought the husband was the owner, the law is that the wife is not estopped. See Jobe v. Hunter, Milligan v. Alexander, Hoffman v. McFadden, and Marshall v. Hall, supra. 36 Am Jur Mechanics' Liens §104. See Feuchtenberger.

The relationship of principal and agent between a husband and wife has been held not inferable from various circumstances as follows: It has been declared that the husband's authority to act as the wife's agent is not to be inferred from the marriage relation, from the mere fact that he occupied, or managed and controlled his wife's real estate, from the offer of suggestions by the wife concerning the build-

ing or improvements, or from the exhibition of interest by the wife in the work. It is generally held that the mere knowledge of a married woman that her husband is making improvements upon her property or was about to have certain work done, or enter into a particular contract, is not sufficient to establish the fact that he is acting as her agent. See Feuchtenberger, Hoffman v. McFadden, and Marshall v. Hall supra and Wohlmuther v. Mt. Air Plumbing and Heating, Inc. 244 Md. 321. Nor does her mere failure to dissent from the proposed transaction or to interpose objection import an intention to bind her real estate. See P. Delany & Co. v. Duvoli and Murray v. Zemon, supra. Other circumstances which have been held not sufficient to prove the husband's agency are the facts that the wife owned the real estate on which the improvements were made, and that

the house constructed, or on which the improvements were made, served as a family residence. See Warren v. Goodrich and Sutton v. U. S., supra. A number of circumstances have been held to disprove the agency of the husband, as, for example, the facts that the claimant did not know that the materials in question were to be used on the wife's property; that the claimant did not know that the wife owned the land on which the improvements were made, that labor or materials were furnished solely on the credit of the husband; that the husband signed the contract and treated the house as his own; and that the wife had no knowledge that the husband purchased materials on credit, took no part in the planning or construction of the building, suggested no alterations during progress of the work, contributed no money toward the improvement, gave no directions as to the

work, or took no part in the purchase of the materials used. See Wohlmuther v. Mt. Airy Plumbing and Heating, Inc., supra. 53 Am Jur 2d Mechanics' Liens §138.

It is very generally held that a mechanics' lien cannot be created upon the land of a married woman under a contract with her husband alone. Neither husband nor wife by virtue of the relationship alone has power to bind or act as agent for the other. See Wohlmuther, Feuchtenberger, Vasilion, Freeman, H&B Co. of Statesville supra. 53 Am Jur 2d Mechanics' Liens §136. Trial judge intentionally misconstructed 53 Am Jur 2d §142 and ignored all the other sections and cases before and after.(p.24,bot.)

Also, in some jurisdictions, statutes have required that the contract is deemed sufficient to make her property subject to such a lien. 53 Am Jur 2d Mechanics' Liens §135. Not only was Petitioner Mitsuko And-

erson not a party to any contract -- written, oral, or implied -- Respondent specifically and intentionally excluded her from any and all pleading allegations and prayer.

A court which employs a strict construction of the mechanics' lien laws has required the owner's consent to a possible mechanics' lien and held that the written consent referred to by the statute must evidence a clear intent by the owner to subject her interest in the land to a possible mechanics' lien. Silence or acquiescence is not sufficient. A clear, affirmative act of consent is required. See P. Delany & Co. and Murray, supra. 53 Am Jur 2d Mechanics' Liens §117. Virginia, an "absolute prohibition" state and speaking through Feuchtenberger, requires an express authorization. See Judge Brown order of July 17, 1985, supra. There was no

consent or authorization or "assent by conduct"(trial judge Letter Opinion) here -- only an owner/wife without knowledge. And even though there was no act of acquiescence, such an act is not sufficient in any jurisdiction. See testimony, pages 3-5.

Additionally, "consent" means a unity of opinion or an accord of two or more minds. There must be enough of a meeting of the minds to make it fairly apparent that the parties intended the same thing in the same sense. "Consent" denotes an actual and express or affirmative requirement that the improvement shall be made, and has no reference to mere knowledge and passive acquiescence by the owner to improvements by another person. See Feuchtenberger, Vasilion, Freeman, H&B Co., P. Delay & Co, Murray, Hoffman, and Marshall, supra. 53 Am Jur 2d Mechanics' Liens §117. The facts of this case fall so far short of

"consent by acquiescence" or "assent by conduct" in trial judge's Letter Opinion that it only high-lights his strained,result-oriented prejudice against these Petitioners -- and that's not even the law!

Also, while a contract by one who is not the owner or who is unauthorized to contract may be ratified where such person purported to act as agent for the owner, it is not ratified so as to allow a claim of lien against the premises by the fact that the owner, after the completion of the work, receives the profits therefrom. See Warren and Sutton supra. Thus, Petitioner Mitsuko Anderson's increased value or benefit to her land by the addition of the carpet does not bind her. Such a benefit necessarily by its very nature must always occur in these cases and is irrelevant. 53 Am Jur 2d Mechanics' Liens §118. See also Caldwell supra.

Of course, the Virginia Code and recent (1984 and 1985) case law make Virginia law on this point very clear and an "absolute prohibition" law. Creditors of one spouse may not attach real estate owned by Tenants by the Entireties; only creditors with joint debts of both spouses may reach the entireties realty. See Ford v. Poston 773 F.2d 52 (4th Cir. 1985). Also see 36 Am Jur Mechanics' Liens §106 cited on page 23 herein. See also Warren and Sutton, supra.

Thus the law clearly defeats trial judges's notion of "assent by conduct" and "acquiescence-type consent." It's not the law and it's not the facts of this case!

Petitioner Mitsuko Anderson did none of these things as evidenced by her own testimony and that of her husband and Respondent's witnesses Paravaoiz and Whitmire and by Respondent's own pleadings and

admissions to Requests for Admissions and responses to Written Interrogatories. But if she had, the law still doesn't hold her interest in Tenants by the Entirety property!

Further, as to Petitioner Mitsuko Andersons's non-involvement and status, see Petitioner Charles Anderon's Statement of Facts filed May 17, 1988 (agreed with by trial judge June 27, 1988) (in Appendix, ¶¶ 5.-9.,11.,24.&25.)

RE QUESTION III (Contract)

> "Where property against which claim of lien for materials is filed is owned by husband and wife as tenants by entireties, plaintiff is not entitled to have lien enforced against the property if wife was not a party to the contract (emphasis added) pursuant to which materials were furnished." H&B Co. of Statesville v. Hammond, 195 S.E.2d 58 (N. C. 1973)

Trial judge says,"a mechanics' lien does not represent a claim of a personal

debt owed, but instead is a claim against the property itself." (emphasis added) (p. 2 of 11/13/87 Letter Opinion) Thus he attempts to avoid the "claims of creditors" language of Vasilion, supra, by trying to distinguish the same in its origin. It is clear however that what the court said in Vasilion was a rule of law applicable to exactly what they stated, viz., claims of creditors, i.e., all claims, i.e., any claims. No matter how the case arose, the ruling is unequivacal and conclusive of "claims" in its most general sense, for otherwise the ruling would have no meaning in English usage.

Trial judge attempts to distinguish "the underlying contract" from "the work performed and material furnished" and says, "It is not the underlying contract for performing the work and supply materials which creates the lien." (p. 2 of 11/13/

87 Letter Opinion, in Appendix) However it appears that he likes to have it both ways for he argues against himself and this proposition on the next page by repeatedly referring in this case to an essential element for enforceability being, "...the underlying contract..." Note also his avoidance of the references to "contract" in the four cases cited on p.15,viz., "expressly authorizing," "act," "contract pursuant to which materials were furnished," "ordering," and "requiring."

Trial judge's notion would also imply that if work were done on the wrong lot by mistake, the work being done is the sole consideration to enable enforcement of a mechanics' lien against the interests of both a non-contracting husband and a non-contracting wife (the spousal owners of the erronious lot), an absurdity and one which flies in the face of the sa-

me four cases as to requirement for an "act" or "express authorization" or "contract" or "ordering" or "requiring."

Also he points out on his page 2 a quote from §43-3, "for the work done and improvements furnished" as support for his notion, but fails to follow the rest of his own quote, viz., "...ordered or authorized by the owner or his agent," which clearly indicates again the need for an "ordering" or "authorizing" or "agency" -- in short, a contract.

Additionally, his cite to Weaver v. Harland Corporation at his page 2 is a misrepresentation of it (like his 53 AmJur2d 142).

He again ignores the applicable Virginia law, e.g., "The mechanics lien is a creature of statute, with foundation in a contract with which it must correspond" Wallace v. Brumback, 177 Va. 36(1941). See Sergeant v. Denby, 87 Va. 206, M.J. Steigleder & Son v. Allen, 113 Va. 686 (1912), Va. Code §43-3, annotations I.

The testimony in this cause from both sides is that there was a written contract and it was between Petitioner Charles M. Anderson t/a AA Engineering and Respondent with Petitioner Mitsuko Anderson having nothing to do with it and no knowledge of it nor with or of anything concerning Respondent or the subject work.

RE QUESTION IV (Equity and Opinion)

Trial judge in his Letter Opinion at his page 3 says,

> "As is apparent from the evidence, the intent of the Andersons was to enhance the value of their property through Mr. Anderson's construction of the house, with Mr. Anderson taking all necessary steps to insure completion of the construction." (emphasis added)

and

> "The mechanics' lien statute was not meant to be frustrated in its enforcement against estates by the entireties solely because only one spouse signs the underlying contract, when the other spouse authorizes, consents to, and stands to benfit from the

work performed by the contractor under the contract." (emphasis added)

The above kind of logic ensues only when a trial judge is straining for a predetermined result. Note that the trial judge attributes to himself the devine gifit of seeing into Petitoner Mitsuko Anderson's mind to determine her intent! All testimony denies any attitude by her except indifference in the context of being without knowledge. Note also trial judge devines an intent to both Petitioners to frustrate the mechanics' statute giving no consideration to the fact that defendants have a right to defend according to the law when they get sued. His making such giant leaps clearly indicates his prejudice before hearing this matter.

Judge Brown in his July 17, 1985 letter opinion, supra, said that in order to charge the wife's interest, one would have to find express authorization, agency, or

an act of estoppel. At no time does he attempt to devine intent -- only fact and evidence.

> "The very existence of a mechanics' lien on land, as well as the jurisdiction of the court to enforce it, depends upon statute and not upon equitable or ethical rules, so that neither the conscience of the chancellor nor the length of his foot can supplement the statute and vest the court with any jurisdiction except that which is based upon the provisions of this chapter fairly constructed." Feuchtenberger, supra (emphasis added)

That case and quote is used in the annotations to Virginia Code, Title 43 as a key foundation stone to the legislative purpose. It speaks of chancellor's "conscience" and "length of his foot" for a reason that trial judge clearly had difficulty with. His foot got in his mouth and his prejudice and hatred for Petitioner Charles Anderson into his conscience. Neither is a judicial expression of the statute or facts in this cause. To rule with-

(14th Amendment)

out evidence that frustration of the statute was the intent instead of a legal defense made available by the legislature and the courts is to attribute wrongful intent to every defense that a trial judge doesn't approve of personally or to every defendant he dislikes.

But this is not the first time this trial judge has used these words. In another mechanics' lien case against the same defendants on the same subject matter on the same property on the same issues, Amer-Paving and Construction Corp. v. Charles M. Anderson, et al, Fairfax Circuit Court, Chancery No. 94646, this trial judge referred the matter to a commissioner Henry C. Mackall, which matter started all this current prejudice and hatred, and told him (as is the subject of on-going law suits by Charles Anderson in federal court against them both alleging conspiracy to take his

house by abusing the Virginia mechanics' lien laws, which the federal Fourth Circuit Court of appeals has agreed with Charles Anderson on in part) to go this "equitable" route and to ignor the facts and law. This Mr. Mackall clearly did and in a most open, notorious, hostile, disgusting, pathetic, and abominable way. He said these same words at his preliminary commissioner's meeting, during hearing and motions arguments, and in his commissioners report to the court. For three years he dragged that conspiracy out until finally, counsel for that complainant dropped the ball on what he was supposed to do so much and so badly that the judges Middleton, Brown, and Plummer could no longer afford to help him and finally Judge Plummer reached a point where he had to dismiss the cause, release the lien, and quash the commissioners report.

Consider these arguments in light of the

arguments made in Reasons for Granting the Writ under Question I (Pleading Status as a Wife), Question II (Agency), and Question III (Lien Founded in Contract) above. Something funny was going on in that Opinion Letter that took over five weeks to write and its obvious on its face!

"Equitable or ethical rules" don't make it, but even that isn't what was going on in trial judge's mind. Arguendo, if one considered them, it's only biased guesswork from the mind of a biased judge.

Petitioner Mitsuko Anderson had no knowledge -- how could she even have a state of mind on the subject of whatever kind.

Trial judge's final frustration, after the January 21, 1988 revelations on there being no agency and no consideration of it, contrary to his obviously concocted Letter Opinion, came when he had to endorse Petitioner Charles Anderson's Statement of

Facts under Virginia Rule 5:11 (d), and in fact did agree with almost all of its numbered paragraphs. Kindly refer in the Appendix to it and attend to the follow-numbered paragraphs therein to get a feeling for the depth of his state of lying confusion and the true facts according to the trial judge therein: ¶¶ 1., 11. - 17., 19., 21., 24., and 25. Now that's revealing of the truth and equity! Look at the rest of it too as affect Questions I, II, III, and V.

RE QUESTION V (Bias & Va. Code §54-142)

Upon Petitioners' motion to dismiss the cause and release the mechanics' lien founded in Virginia Code §54-142 D., failing to have a license with the State Board of Contractors, trial judge lied of the facts and refused to rule. This motion was presented at trial by way of Respondent having knowledge of the section and was pre-

sented at post-trial motion by way of Respondent not having given substantial performance, the two ways of proving the fatal lack of license mentioned in the statute. Upon the latter, trial judge denied the motion from the bench on May 12, 1988 without reading the cases provided him by Petitioner Charles Anderson then, which quantitatively defined substantial performance (the court having ruled at trial that Respondent gave only 63% performance under the contract), and stating "You testified you got all the carpet you asked for." Petitioner Charles Anderson anwered that he had not so testified but had testified on two occassions at trial of certain rooms and areas that received no carpet but were contracted to as evidenced by the shortfall between the contracted amount of 500 square yards and the ruling by the court of 314 square yards having been provi-

ded. On May 26, 1988 upon Petitioner Charles Anderson's moving for an order memorializing the lie that trial judge said on May 12, trial judge lied again and said, "I didn't say that, but I'll write you a letter giving you my decision" but failed to do so even upon Petitioner's continuing to ask for it and complaining of it. Thus Petitioners were without a final order on an issue which demanded dismissal of the cause and release of the lien because the court refused to provide it.

Trial judge was so committed to his Letter Opinion that it was (psychologically) impossible for him to consider Virginia Code, §54-142 D. to the point where he had to lie and the Virginia Supreme Court had to ignore Petitioners' Petition for Appeal in order to protect him in his ccnflict,bias, unjudicial ruling on enforceability and ignoring §54-142 D. with lies.

Virginia Code §54-128 makes it a crime to do business without the license. Fairfax County Ordinance §4-7-14 also makes it a crime. Respondent had neither license. §54-113 says this Respondent is required to have both licenses. This was uncontroverted by Respondent. §54-142 D. says that Respondent is improperly in court (without standing as a party). The result of not having the license is being out of court, i.e., the cause must be dismissed and the lien released. The contract is the basis for determining performance. The lack of Respondent's standing starts (and is governing) as of the time of contracting. Sixty-three percent completion is not substantial. All this law was presented to trial judge in written form.See F. S. Browen Elec. Co. v. Foley 194 Va 92, Rohanna v. Vazzana, 196 Va 549, Baciqualupo v. Fleming, 199 Va 827, Cohen v. Mayflower Corp, 196 Va 1153, F. N. Thompson v. Anchor Invest. Co. 239 Fed 2d 470, Smith

v. Packard 94 Va 730, Neely v. White 177 Va 358, Eastern Oil Co. v. Coulchan 65 W. Va. 531, Caldwell & Drake v. Schmulbach 175 F. 429 (C.C.W.Va. 1090), Buena Vista Co. v. McCandlish & Clowes 92 Va 297, Thomas & Moran v. Kanawha Valley Traction Co., 73 W.Va.374, Warren v. Goodrich, 133 Va 366, Baltimore & O.R.Co. v. Lafferty 2 W.Va. 104, Brown v. Aquilar 259 P. 735, Connel v. Higgins 150 P. 769, Sqarlat v. Griffith 36 A.2d 330, Black's Law Dictionery, 13 Am Jur 2d 43, 44 Building Contracts, 17 Am Jur 2d 375 - 378 Contracts,Corbin on Contracts, Vol 3A, chapter 36, §§ 700-712, Substantial Performance, A Treatise on the Law of Contracts by Samuel Wilison, Third Edition, vol's 5&6, 17A C.J. S. §§508 - 515 Contracts.

By this time judicial performance was at a disgusting low. The trial judge had lied, ignored the law, and refused to follow his oath and the Virginia supreme Court buried it and complaints of it. Petitioners were without a forum because Petitioner Charles Anderson had complained of it and sued on it. The court had revealed itself for what Petitioner Charles Anderson had alledged it was.

It's also interesting to note that these same Parties defendant, same subject mat-

ter, same property, same issues, and same statutes and case law had prevailed, i.e. Complainant's cause was dismissed and lien released, in American Paving supra by Judge William Plummer. Trial judge had gone to extremes but apparently felt confident in getting away with it against both spouses.

There can be no due process or fair, unbiased hearing when trial judge has such personal, harmful, and wrongful involvement with Petitioner Charles Anderson as above and as continued below in greatly summarized form. See agreed Statement of Facts in Appendix. See Va. Code §54-142 in Appendix.

(1) Anderson had sued Middleton three times in federal court with 4CCA stating in all of them that Anderson's allegations of conspiracy by Middleton to take his house were factual and in good faith.

(2) Anderson grieved Middleton several times before the Judicial Review Commission.

(3) It started a few years ago when

Middleton tried to put Anderson is jail on something a jury cleared him of, but Middleton as trial judge therein wouldn't accept it personally. That was only one of eight such attempts all prior to this cause and subject of complaint continuously. He never succeeded.

(4) Middleton refused to recuse himself at trial upon Petitioners' most emphatic demands, but made derogatory remarks to and of Anderson then and during trial.

(5) Middleton had refused to hear Petitioners' motions on release of liens for lack of proper perfection under Virginia Code § 43-17, 17.1, 23, etc. on several occasions and refused to allow Petitioners speak or argue at such motions.

(6) Middleton allowed Respondent's Counsel to lie openly and notoriously before the court at trial and to proceed against Anderson though Anderson had moved for his

(Sickles') release from the case because of attorney/client conflict between he and Anderson from recently before and to use as witness at trial another attorney, Wm Arnold, who also had an attorney/client priviledge conflict with Anderson, and also under the following conditions: Anderson sued Middleton and Sickles in federal court on conspiracy to take his house, Middleton moved (as defendant) against Anderson (as plaintiff) for sanctions under FRCP 11 (frivolous suit), Anderson (as defendant) moved Middleton (as judge) for removal of Sickles from the case (for above mentioned conflict citing Sickles' admission of it, admission of Sickles' partner of it, and Judge Plummer's positive ruling on it) and for that Middleton cited Anderson with $1200 in sanctions for Sickles against Anderson under Va. Code §8.01-271.1, while Middleton and Sickles both

(as defendants in federal court) were moving against Anderson (as plaintiff) (for sanctions) and while (during the trial of this cause) the Fourth Circuit Court of Appeals reversed and remanded U. S. District Court on its moving against Anderson without notice and on its Rule 11 sanctions without a showing of lack of good faith (which district court judges were also sued for the same cause).

(7) On March 25 and June 17, 1988 motions, Middleton lied and tricked Petitioner Mitsuko Anderson's counsel, Mr. George J. Viertel, by refusing a release of said lien by payment under Va. Code §43-70 saying that it came "one second too late" just after he entered a final order in the case and was thus out of his hands, having just previously told Mr. Viertel that he couldn't sign the order for release of lien because he didn't know the amount of judgment because he hadn't signed the final ord-

er yet! When Petitioner Charles Anderson said that that was crazy and nothing but a trick, Middleton told Charles Anderson to look for somebody to complain to of it if he could find anybody left. Upon Anderson's objecting vehemently, Middleton said possibly so, but in any event the Clerk of Court couldn't take any money until there had been an appeal noted. Petitioners came back on June 17, 1988 with the same motion after having had noted their appeal, whereupon Middleton said that Petitioners were one second late again!

If this Petition for Writ of Certiorari and subject matter isn't quite proper at this point or if all the backup paper isn't appended, kindly keep in mind that the nature of the events are lies and tricks by the court and their refusal to follow the law or memorialize events. Petitioner frustration is a gross understatement.

(8) Middleton intentionally frustrated Petitioners' discovery even as to Petitioners' motion to require Respondent to elect to proceed under a theory of Petitioner Anderson being agent for his wife or being a general contractor until actual trial (causing loss of opportunity to properly use time to prepare defense on that issue) and then, upon Respondent's election to proceed with Anderson being a general contractor, Middleton brought the issue of agency back into the trial sua sponte. (which then he later changed his mind on on January 21, 1988 after having argued it as a necessary and essential element of his Letter Opinion finding of enforceability) (see page 20)

(9) On March 7, 1986 upon Petitioner Mitsuko Anderson's counsel's motions to release liens in American Paving, supra, founded in certain spousal defenses, com-

plaint (therein) resisted saying that Petitioners were not married (without reason and without proffer, but knowing that Middleton would run with it because he knew of the judicial hatred because he too had previously been counsel to Anderson) and of course Middleton ran with it, whereupon Anderson offer to take the stand and produce an original marriage certificate issued by a Vice Consul of the United States. Middleton ran off the bench saying he would be back at 2 P.M. to continue the matter, but when in chambers told counsel that he knew Anderson as a liar and wouldn't believe a word he said on anything and never came back to the bench at 2 P.M.! Ultimately the marriage was proven at trial but only after Middleton had run Anderson through 19 more months of further judicial

conspiratoral harm with Commissioner Mackall and carried his hatred for Anderson over to harm his wife's rights too.

CONCLUSION

This cause has not been heard by an unbiased and honest trier of fact.

The facts of the case presented herein are uniquely supplemented by Petitioner Charles Anderson's Statement of Facts filed May 17, 1988 (included in Appendix at page A-19) and by trial judge's June 27, 1988 agreement with most of the numbered paragraphs therein (included in Appendix at page A-14). Rule 5:11 (d) requires the trial judge to "overrule" (he didn't), "make corrections" (he didn't), "include...additions to ...complete" (he didn't), and "certify the manner...in-complete" (he didn't). Rule 5:11(d) allows Respondent (as complainant) to "...specify errors alleged..." (but he didn't). Thus there is, according to Rule 5:11(d), agreement with the majority of Petitioner's numbered paragraphs.

Due process under the 14th Amendment has been denied in the taking issue by way of the ruling on enforceability against the Tenancy by the Entirety interest of Petitioner/wife whose interest cannot be held under the law there having been no authorization, contracting, use of agency, estoppel, knowledge, or any involvement whatsoever by her.

The law absolutely requires dismissal of the cause and release of the subject mechanics' lien in that no court can recognize a non-party, i.e., a party with no legal status, viz., Respondent being without the statutory required license as a contractor (improvement to realty) and local license -- a criminal act.

WHEREFORE Petitioners respectfully pray this Honorable Court grant their Petition for a Writ of Certiorari to the Circuit Court in Virginia for Fairfax

County to dismiss this cause and release the subject lien under appropriate law and to charge Respondent with their costs in defense. Supercedeas requested.

Respectfully submitted,

CHARLES M. ANDERSON
Petitioner Pro Se
8401 Cathedral Forest Dr.
Fairfax Station,Va.

7/17/89

GEORGE J. VIERTEL, Esq.
Counsel for Petitioner
MITSUKO ANDERSON
Suite 105, 9525 Ga.Ave.
Silver Spring, MD.
(301)589-7060

PROOF OF SERVICE

CHARLES M. ANDERSON, after being duly sworn, disposes and says that pursuant to Rule 28.4(a) of this Court, he served the within Petition for Writ of Certiorari on counsel for the Respondent by enclosing three copies thereof in an envelope, first class postage prepaid, addressed to:

Charles Sickels, 4010 University Dr.
Fairfax, VA. 22030

and depositing same in the U. S. mail in Fairfax, Virginia on 7/17/89.

/s/
CHARLES M. ANDERSON, Affiant

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this 17 day of July, 1989.

/s/
NOTARY PUBLIC

My commission expires _____.

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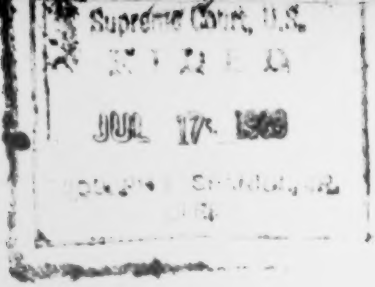

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

CHARLES M. AND MITSUKO ANDERSON,

Petitioners

vs.

PARCOM, INC.,

Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF
FAIRFAX COUNTY, VIRGINIA

CHARLES M. ANDERSON
pro se
8401 Cathedral Forest Dr.
Fairfax Station, Va. 22039
Ph: (703) 643-2562

MITSUKO ANDERSON
by counsel
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Nineteenth Judicial Circuit of Virginia
Fairfax CountyJudicial Center

November 13, 1987

George J. Viertel, Esq.
Edward D. Hubacher, Esq.
Charles W. Sickels, Esq.
William L. Carey, Esq.
Mr. Charles M. Anderson

Re: Parr Excellence, Inc. t/a PARCOM vs. Charles M. Anderson et al,Ch.No.98228

Dear Counsel:

The above-styled matter came before the Court for trial on October 6-8, 1987.

At the conclusion of the trial, a personal judgment was rendered against Charles M. Anderson by the Court. The Court also ruled that the deed by which the property known as 8401 Cathedral Forest Dr. was conveyed to "Charles M. Anderson and Mitsuko Anderson,his wife, tenants by the entirety" created an estate of tenancy by the entirety. The Court reserved judgment on whether the mechanics lien filed by the Complainant could be enforced agianst the

property on Cathedral Forest Drive.

It is the opinion of the court that the mechanics lien can be enforced against the property.

Defendants have cited the case of Vasilion v. Vasilion, 192 Va. 735 (1951), as dispositive of the issue of enforceability. In Vasilion a father sought to enforce a a judgment secured against his son upon property alleged to have been owned by the son and his wife as tenants by the entireties. At page 740 the statement is made:

(page 2)

> It follows that the entirety isliable for the joint debts of both spouses and is reachable against them by proper process. 35 A.L.R. 144. But where a tenancy by the entirety in the fee simple is once created the property iscompletely immune from the claims of creditors against either husband or wife alone..."

In contract, a mechanics'lien does not represent a claim of a personal debt owed, but instead is a claim against the proper-

ty itself. Nicholas v. Harrisonburg Building & Supply Co., Inc., 181 Va. 207, 211 (1943). It is not the underlying contract for performing work and supplying materials which creates the lien. Rather, it is the use of materials furnished and work expended that enables the lien to attach to a given property. See Weaver v. Harland Corporation, 176 Va. 224, 231 (1940). A mechanics' lien is intended to give those who have enhanced the value of property the security of a lien to the extent they have added value. United Masonry, Inc., v. Jefferson Mews, Inc. 218 Va. 360, 378 (1977). The in rem nature of a mechanics' lien is embodied in the provisions of the Virginia Code for the establishment of the lien. Section 43-3 states in part:

> All persons performing labor or furnishing materials...for the construction...or improvement of any building or structure...shall have a lien, if perfected as hereinafter provided,

> upon such building or structure... for the work done and materials furnished. But when the claim is for the improvements to an existing structure only, no lien shall attach to the property improved unless such improvements were ordered or authorized by the owner or his agent.

This section indicates that the basis for a mechanics' lien is the work performed and material furnished with respect to a given property, and not any personal obligation undertaken by the owner of the property interest. Therefore, the absence of an underlying contractual obligation with an owner is not fatal to the enforcement of a mechancis' lien. Section 43-3 however cannot be construed so as to effect an unconstitutional taking of private property without the owner's consent. See Feuchtenberger v. Williamson, 137 Va. 578 586 (1923). The Virginia Supreme court in Feuchtenberger stated,

> We think it clear that the General Assembly here only intended to au-

> thorize mechancs' liens upon the interest or estate in the land of the person requiring or authorizing the work to be done. If it could be otherwise construed...it would be held to be an attempt to take private property for private purposes without the owner's consent and without due process of law.

(page 3)

Therefore, for a mechanics' lien to be enforceable against any given property, it must be shown thatthe work was done with the owner's authorization or consent. See 53 Am. Jr. 2d Mechanics' Liens §113 (1970).

In the case at hand, both husband and wife own an undividied interest in the property in question. The testimony reveals that Mrs. Anderson knew that she owned the Cathedral Forest property as a tenant by the entirety, that is, with an indivisible interest in the property; that she knew her husband was constructing a building on that property in which each owned an indivisible interest; that she had no objection to this

construction, and in fact acquiesced and assented to it; that their interest in the property stood to benefit from the construction; and that this construction was to be accomplished through her husband contracting with various parties to perform work and provide materials. Mrs. Anderson's testimony establishes that she knew Complainant was performing the work, that she in fact acquiesced and assented to this performance, and that she was willing to accept the benefit of the enhanced value to her property that Complainant's performance accomplished. This evidence is sufficient to establish the consent necessary to bind one spouse's interest in an entireties estate under a mechanics' lien when the other spouse has contracted with the performing party. See id.§142. As is apparent from the evidence, the intent of the Andersons was to enhance the value of their property thr-

ough Mr. Anderson's construction of the house, with Mr. Anderson taking all necessary steps to insure completion of the construction. Thus, the Court finds that Mr. Anderson authorized Complainant's performance on behalf of the indivisible interests of the Andersons together, in addition to Mrs. Anderson's consent to the work performed by the Complainant.

Under Feuchtenberger, Mrs. Anderson's authorization and/or consent combined with the actions of Mr. Anderson are enough to allow enforcement of a mechancis' lien against their interest in the property. The mechanics' lien statute was not meant to be frustrated in its enforcement against estates by the entireties solely because only one spouse signs the underlying contract, when the other spouse authorizes, consents to, and stands to benefit from the work performed by the contractor under

the contract.

The Complainant's mechanics lien against the Cathedral Forest property may be enforced. It is requested that an appropriate Order be drafted by counsel for the Complainant for presentation to the Court.

Very truly yours,

/a/
Thomas J. Middleton

"It appears to me that the case which has been asserted for reconsideration is, primarily, based upon an agency theory. And all of the arguments or many of the arguments that have been made here relate to the fact that there was a contract and that Mrs. Anderson was not the agent of her husband or had not joined in with him in this endeavor to build this house. That is not what the decision that I made is about. My decision is not based on agency. It's not connected with the theory of agency. (emphasis added) It is connected with the fact that improvements were made to this house, and they were made by Mr. Anderson. And connected with that is a statement made in my opinion and my opinion is, from the testimony of Mrs. Anderson, is that that testimony established that she knew that Mr. Anderson was doing this work. That she, in fact, acquiesced and assented to the performance of this work. Particularly, in this case, the carpet. That's what we are talking about, specifically. (emphasis added) And that she was willing to accept the benfits of the enhanced value to her property. Further, she was a tenant by the entirety. She knew she had an ownership in this property." (transcript 1/21/88, pp. 1-34)

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PARCOM, INC., *
COMPLAINANT, *
CH.NO.98228
V. *
CHARLES M. ANDERSON, et al., *
DEFENDANTS *

ORDER

This cause came to be heard at trial on October 6, 7, and 8, 1987, the parties appearing by counsel, except Defendant, CHARLES M. ANDERSON, appearing pro se.

At the conclusion of the trial, the Court ruled that the subject Deed of conveyance created an estate of Tenants by the Entirety, that title recognized by the Commonwealth for husband and wife, each taking the whole; that defendant Charles M. Anderson was indebted to complainant in the amount of $4,851.50 together with a contractual service charge thereon at the rate of Eighteen Percent (18%) from January 16,

1986, as to one-third, February 16, 1986, as to one-third, and March 16, 1986 as to one-third until October 8, 1987, the date of judgment, and thereafter at the judgment rate of eight percent (8%) until paid pursuant to Va. Code Section 6.1-330.54; and that no personal judgment could be had against defendant Mitsuko Anderson; and that it withheld judgment as to whether the subjects' mechanics' lien could be enforced against the subject land.

UPON CONSIDERATION, the Court in its opinion letter dated November 13, 1987, hereby made a part of this Order by reference ruled that said lien could be enforced against said land.

UPON CONSIDERATION WHEREOF, it is

ADJUDGED, ORDERED AND DECREED that defendant CharlesM. Anderson is indebted to complainant in the principal amount of $4850.51, $1,433.64 contractual service

charge, $727.71 attorney's fees, $10.00 lien recording fee, $93.00 cost of filing suit, making a total amount due of $7,114.86 with interest on the principal amount of $4850.51 at the judgment rate of Eight Percent (8%) per annum from October 8, 1987, hereinafter until paid, and that the mechanics' lien filed on the following described real property: Estate 7-A, Section One, Cathedral Forest Drive, Fairfax Station, Virginia, owned by Charles M. Anderson and Mitsuko Anderson, his wife, is valid and enforceable.

THIS JUDGMENT IS FINAL, except as to pending sanctions.

ENTERED: March 25, 1988

/c/
Judge Thomas J. Middleton

WE ASK FOR THIS:
/s/
Charles W. Sickels
Counsel for Complainant

OBJECTED TO:
/s/
Charles M. Anderson
Defendant, Pro Se

OBJECTED TO:
/s/
George J. Viertel
Counsel for Defendants Mitsuko Anderson, Trustees and Trust Beneficiaries

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PARCOM, INC., COMPLAINANT, *
*
VS. *
CH. NO. 9822
CHARLES M. ANDERSON, et als, *
DEFENDANT *

On June 17, 1988, Charles M. Anderson tendered to the Court a Statement of Facts. Objections to the Statement were filed on behalf of Parcom, Inc. The Statement presented appears to be incomplete. It contains only selected portions of the trial with commentary by Mr. Anderson.

In addition, the following corrections and comments are added:

Paragraph 1. This Court denies prejudice against the defendant.

3. The Court considered all relevant evidence presented with respect to the manner in which the property was titled.

6. See the written opinion letter dated November 13, 1987 set forth at pages 462 of the record.

9.e.A-F contain allegations which this Court believes are inaccurate.

Finally, it is the recollection of the Court that a court reporter was present during the trial. The Court is unable to recollect all details in a manner sufficient to provide for preparation of a complete Statement of FActs.

Dated: June 27th, 1988. /s/
Judge Thomas J. Middleton

Virginia: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 20th day of March, 1989.

Charles M. Anderson, et al., Appellants,

against Record No. 880735
Circuit court NO. C-98228

Parcom, Inc.,

From the Circuit court of Fairfax County

On July 27, 1988 came Charles M. Anderson, in proper person, and Mitsuko Anderson, by counsel, and filed a petition for appeal in the above-styled case.

On consideration of the motion to dismiss filed by the appellee and the objection filed by appellant Charles M. Anderson, the Court hereby grants the motion to dismiss and refuses the petition for appeal.

On further consideration whereof, the remaining motions filed in the case to declare, etc. and to release lien, etc. are hereby denied.

A Copy,
Teste:
David B. Beach, Clerk

By:
/s/
Deputy Clerk

Virginia: In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of April, 1989.

Charles M. Anderson, et al., Appellants,

against Record No. 880735
Circuit Court No. C-98228

Parcom, Inc., Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 20th day of March, 1989 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/
Clerk

Virginia: In the Circuit court for Fairfax county

PARCOM, INC., Complainant,
v.
CHARLES M. ANDERSON, et als., Defendants.
ch.no. 98228

STATEMENT OF FACTS

(Facts, Testimony, and other Incidents of Trial)

COMES NOW defendant pro se CHARLES M. ANDERSON and files his Statement of Facts under Virginia Supreme court Rule 5:11(c) as follows.

1. At the start of trial on October 6, 1987 defendant pro se moved the court for the recusal of Judge THOMAS J. MIDDLETON founded in a history of conflict and prejudice by said judge against said defendant.

2. Complainant admitted (by way of response to defendant pro se's Request for Admissions) that defendant pro se and his wife, co-defendant MITSUKO ANDERSON, held the subject property as Tenants by the En-

tirety (that title recognized by the Commonwealth for husband and wife, each taking the whole) and the court so ruled at trial that complainant had so admitted.

3. The court ruled on the Tenants by the Entirety title based on the deed language of "...fee simple...", "...husband and wife...", and "...Tenants by the Entirety..." without further consideration of the deed frontispiece block nor of the testimonial evidence by the parties to the deed presented on the intent of the parties tothe deed (that there be survivorship), considering it to be unnecessary.

4. Defendant pro se's expert witness (himself) expert testimony (Professional Engineer in civil engineering in the Commonwealth) of only 313 square yards of carpet and pad being installed wasconfirmed by complainant's own evidence of it being only 314 square yards.

5. Defendant pro se testified that he was not agent for his wife, that he did the subject project as his own enterprise under his long-established sole proprietorship AA Engineering, thathis wife had nothing to do with it, that he told complainant president ISHAQ during contract negotiations that he (defendant pro se) was operating as Charles M. Anderson t/a AA Engineering on a "spec" house (house constructed on speculation for a buyer), that the contract was signed a such, (see transcript of defendant pro se's testimony 10/8/87, pp. 1-46)

6. Defendant MITSUKO ANDERSON testified that she had nothing to do with the project, that she spoke to no one at the complainant company, that she knew nothing of the activities or status of any carpet installers or complainant in any way, that it was her husbands business and not hers, th-

at her husband did not do any of these activities for her or on her behalf that she did not move in until that activity had ceased and only then out of necessity for matrimonial shelter; denied contribution to plan, room arrangement, equipment, selections, money to project, management, develope idea, (see transcript of MITSUKO ANDERSON's testimony 10/7/87, pp. 1-29)

7. Complainant president PARAVOIZ ISHAO testified (but only after being impeached by his deposition) that his contract was with Charles M. Anderson t/a AA Enginering, that he never talked to or knew of defendant MITSUKO ANDERSON, that defendant pro se told him from the beginning that he was building the house as a "spec" house, that no one ever reported to him anything concerning defendant MITSUKO ANDERSON, that he and defendant pro se contracted for 500 square yards of carpet and pad installed,

that he recommended the grade and quality of carpet to defendant pro se,

8. Complainant witness SAMULEL WHITMIRE testified (but only after being impeached by his deposition) that he installed certain dimensioned areas of carpet and pad (which calculated to 314 square yards), that the subject house temperature inside during installation was about 40°F., that he had no conversations with defendant MITSUKO ANDERSON, that no one ever reported to him any conversations with defendant MITSUKO ANDERSON, that he took instructions from defendant pro se,

9. Complainant admitted:

a. That they had no contract of any kind with defendant MITSUKO ANDERSON,

b. That they had no contact of any kind with defendant MITSUKO ANDERSON, except that she asked her daughter to serve a lunch to some people in the area when her family was eating at noon as a matter of courtesy,

c. That defendant MITSUKO ANDERSON did no fraud, deceit, misleading, inducement, ratification, directing of activities, ask or answer questions, hire or

fire personnel, speak to complainant or complainant personnel, bargain, promise to pay, accept duty to pay, receipt, accept invoice, offer to look to for direction, authorize, consent, request.

but despite those admissions, continued to play loose with the court by:

A. Attempting to hide from the court upon the court's request certain references in defendant pro se's deposition revealing that the question of area of carpet and pad laid had come up during discovery, to the extent that defendant pro se while a witness had to demand to see certain pages hid from the court by Mr. sickles one by one counting backwards from about page 24 to about page 16 until said court-requested information was found by defendant pro se for the court in spite of Mr. Sickles atttempting to keep it from the court to the extent that when it was found, it was found as being high-lighted in color by complainant's counsel) and even to the extent that Mr. Sickles continued to lie about it later during argument although the revelation described above was so revealed in the face of Judge MIDDLETON with great objection and allegation by defendant pro se against Mr. Sickles' behavior, which Judge MIDDLETON by necessity of his being conscious and present, knew of but did nothing about to chstise or even warn Mr. Sickles of.

B. Attempting to suborne perjury from complainant witness Mr. PARAVAOIZ ISHAQ and to lie during argument about Mr. ISHAQ's knowing that the subject house was a "spec" house, that defendant pro se was building it t/a AA Engineering and the contract

clearly indicated so and Mr. ISHAQ knew these things because he had been told so by defendant pro se, and to misrepresent during argument these same things as appeared in Mr. ISHAQ's and defendant pro se's testimony and depositions,

C. Made conclusory statements of fact to the court without offering evidence of same, knowing them to be false and not supported by the evidence, e.g., defendant pro se made up the sole proprietorship AA Enginering as a scam for this purpose.

D. Attempted to argue to the court that his admissions (in response to defendant pro se's Requests for Admissions) that the subject title was Tenants by the Entirety ownership was in fact no such admission but was instead a statement only that the words "Tenants by the Entirety" appeared on the subject deed, when, in fact the wording of the pertinent Requests for Admission were perfectly clear as to their meaning without any possibility for misunderstanding, and then after losing that lying argument, admitted to the court that those admissions were the biggest mistake of his life that he'll pay for years to come for it.

E. Attempted to suborne perjury from complainant witness Mr. SAMUEL WHITMIRE and to lie during argument about his testimony during trial and deposition that complainant laid only 314 square yards of carpet and pad out of a contracted amount of 500 square yards and the fact that the temperature in the house during installation was about 40°F.,

F. Attempting to introduce totally knew subject matter at trial knowingly and intentionally being a surprise to defense, e.g., that defendants' title was not Tenants by the Entirety, to the extent of attempting to use testimony of Mr. JOHN RUST, Jr., Mr. VETTER, Mr. J. RODNEY JOHNSON, knowing and intending said attempts at evidence to be a misrepresentation of the law and the facts, but utilizing personal and court hatred for defendnt pro se, and Mr. RUST through Mr. GLEN SILVER of Mr. HENRY C. MACKALL's office, and Mr. HENRY C. MACKALL, commissioner.

10. Defendants argued the law, in part as follows:

a. Fuechtenberger v. Williamson
b. Vasilion v. Vasilion
c. Coleman v. Pearman
d. Wallace v. Brumback
e. Weaver v. Harland Corporation
f. VA. Code §43-3, Annotations I.
g. 36 Am Jur Mechanics' Liens §106
h. Freeman contracting Co. v. Lefferdink
i. H&B Co. of Statesville v. Hammond
j. 53 Am Jur 2d Mechanics' Liens§142
k. 53 Am Jur 2d §143, p.664 (1970)
l. 75 A.L.R.3d, Annotation, Estate by Entireties - Individual Debt, p. 1188
m. 36 Am Jur Mechanics' Liens, §§101,
n. §100
o. "104
p. 53 Am Jur Mechancis' Liens §138,
q. §136
r. §142
s. §117

t. 53 Am Jur 2nd Mechanics' Liens §118
u. Ford v. Poston
v. Virginia Code §55-20 and 55-21
w. Mills v. Moore's Super Stores
x. Va. Code §43-7 and 43-11
y. Va. Code §43-23.1
z. Va. Code §54-142 D.
aa. Virginia Supreme Court Rules 4:7 (d)(4), 4:7(a)(7),4:11(b), 4:13, 4:11(b)(4), and 5:11(b)
bb. Berry v. Klinger
cc. Maddux v. Buchanan
dd. Robbins v. Damon
ee. Cohen v. Mayflower
ff. Steigleder & Son v. Allenp Sergeant v. Denby; Cary v. Virginia Concrete; Massie v. Firmstone; Clement v. Adams Bros.,

11. On Janaury 21, 1988 on motion, Judge MIDDLETON stated,

"It appears to me that the case which has been asserted for reconsideration is, primarily, based upon an agency theory. And all of the arguments or many of the arguments that have been made here relate to the fact that there was a contract and that Mrs. Anderson was not the agent of her husband or had not joined in with him in this endeavor to build this house. That is not what the decision that I made is about. My decision is not based on agency. It's not connected with the theory of agency. (emphasis added) It is connected with the fact that improvements were made to this house, and they were made by Mr. Anderson. And connected with that is a statement made

in my opinion and my opinion is, from the testimony of Mrs. Anderson, is that that testimony established that she knew that Mr. Anderson was doing this work. That she, in fact, acquiesced and assented to the performance of this work. Particularly, in this case, the carpet. That's what we are talking about, specifically. (emphasis added) And that she was willing to accept the benfits of the enhanced value to her property. Further, she was a tenant by the entirety. She knew she had an ownership in this property." (transcript 1/21/88, pp. 1-34)

12. Judge MIDDLETON's letter opinion of November 13, 1987 omits the word "expressly" just before the word "authorizing" in his quote from Feuchtenberger at the bottom of his page 2. and has refused to correct or even acknowledge this misrepresentation of the law though complained of and objected to and clearly brought to his attention by defendant pro se.

13. Judge MIDDLETON on Semptember 4, 1987 and Judge JOHANNA FITZPATRICK on Sep-

tember 11, 1987 and again later and at trial Judge MIDDLETON assistedcomplainant to defendants' detriment and out of hatred for defendant pro se in discovery on the issue of "acted on behalf of" and other similar matters of protracted frustration (about a year) of defendants' discovery by complainant through lying and court help, allowing complainant to avoid discovery issues of agency and status of defendant pro se in complainant's allegations and case, viz., general contractor, owner, or agent to harm defense at trial on these issues as well as other issues of surprise at the 24th hour. Defendnat pro se complained of these judicial actions again and again, but was ignored by both judges, e.g., defendant pro se September 18, 1987 letter to both judges jointly, motions, and at trial.

14. On October 7, 1987 at trial Judge MIDDLETON coerced and ordered defendant

pro se to go get his wife, co-defendant MITSUKO ANDERSON, to court over his (defendant pro se's) objection and fromher sick-bed without subpoenae by complainant and without any prior indication whatsoever from complainant of his intending to call her to the stand as his witness.

15. Testimony was not allowed before the court by complainant's witnesses Mr. JOHN RUST, Mr. VETTER, and Mr. J. RODNEY JOHNSON. Additionally their documents were not allowed by ruling. Mr. SICKLES then proceeded to attach them behind his brief submitted to the court at the end of trial as a trick, again playing loose with the court, but the court not chastising Mr. SICKLES for it, causing him further to feel he could continue to misrepresent and play tricks without limit from the court because the court hates defendant pro se.

16. Although defendant pro se had his tape recorder in operation and in plain view on the table before Judge MIDDLETON for three days, Judge MIDDLETON's position is that he gave no permission or authorization of any kind for defendant pro se to so do and that defendant pro se never asked for permission of the court to so do.

17. At trial Judge MIDDLETON denied defendants' motion for dismissal of cause and release of lien founded in Virginia Code §54-142 D., stating that complainant had no knowledge of the section. On March 4, 1988 Judge MIDDLETON denied similarly stating that complainant had no knowledge of the section and gave substantial performance. On May 13, 1988 Judge MIDDLETON denied similarly stating that complainant gave substantial performance because defendant pro se testified that he got "all the carpet he asked for," and again denying defendant

pro se's request to use a tape recorder being without a court reporter, denying that the basis for interpreting "substantial performance" is the contract.

18. The court accepted defendant pro se's testimony as an expert witness in civil enginering and Professional Engineer in the Commonwealth.

19. The court denied defendant pro se's expert witness testimony on premature wear and tear on the carpet despite his testimony on qualifications as follows:

a. B.C.E., M.S.C.E., PH.D., B.S., M.S.C.E. all in various disciplines of civil engineering.

b. 20 years of design experience in civil engineering.

c. 4 years as Director of Engineering for the National Association of Home Builders Research Foundation.

d. Having written 6 books on residential construciton, their contents, and materials for the Department of Housing and Urban Development of the federal government as a client and other books on residential construction for other groups, e.g ,

Home Owners Warranty Corportion, the Office of Technology Assessment of the U. S. Congress, the White House staff, various U. S. senators, etc., having conducted studies for years at NAHB Research Foundation on the life-term of residential contents and materials (specifically including the construction of life-term curves for various materials and contents), having served this court on numerous occasions over a period of years as an expert witness on residential damage and loss and costs and repair including their materials and contents, and doing cost and damage for clients for years,

20. Complainant president witness Mr. PARAVAIZ ISHAQ testified that he knew of the Virginia code §54-142 provisions generally as tothe "place" when questioned at length on it at trial.

21. At the start of trial when defendant pro se was listing instances of prejudice and conflict by Judge MIDDLETON against him, Judge MIDDLETON interrupted and stopped defendant pro se from continuing over defendant pro se's argument that it was an essential and necessary part of his defense, due process, and right to a

fair hearing, that defendant had alleged in open court (as well as elsewhere prior and subsequent thereto) that Judge MIDDLETON was attempting to conspiratorally and wrongfully take his house from him. Judge MIDDLETON said that no other judge had agreed with defendant pro se on those allegations (though not one word had ever been allowed to be heard on the truth of the facts of the allegations) and that no other judge would hear this case (trial) because defendant pro se had sued so many of them, so he had to.

22. Defendants got no Title 43 notice.

23. The court nor complainant never qualified the translator in defendant MITSUKO ANDERSON's language, viz., Okinawan.

24. Defendant MITSUKO ANDERSON gave no testimony of consent, assent, authorization, or acquiescence, but did give testimony to the opposite.

25. Complainant gave no evidence of:

a. Duty on the part of MITSUKO ANDERSON to do anything regarding complainant,

b. Duty on the part of MITSUKO ANDERSON to repudiate anything.

c. Knowledge of anything, nor any basis for inferring knowledge.

d. Any activity or act on the part of MITSUKO ANDERSON concerning anything.

e. Anything to refute what any defendant testified to about anything.

/s/
Charles M. Anderson
Apellant/Defendant Pro Se
8401 Cathedral Forest Dr.
Fairfax Station, VA. 22039
643-2562
5/17/88

Virginia; In the Circuit Court of Fairfax County

SMITTY'S LUMBERTERIA, INC., Complainant,	)	
v.	)	CH. NO.
	)	90299
CHARLES M. ANDERSON, et al, Defendant s.	)	

ORDER

This matter having come before the Court upon the Motion of Complainant Smittys Lumberteria for Partial Summary Judgment on a Bill to Enforce a Mechanic's Lien, and this Court having considered the Memoranda in support thereof and in opposition thereto, and the Court having heard argument on this matter on Friday, May 3, 1985; and

IT APPEARING to the Court that, in accordance with Section 43.1 et seq. of the Code of Virginia and the established case law that defendnt Mitsuko Anderson's undivided interest in the property held as tenants-by-the-entireties cannot be affected by the lien asserted by Complainant without

the establishment of certain disputed material facts; and

IT FURTHER APPEARING to the Court that for the above-stated reason and the reasons stated in this court's letter-opinion dated May 16, 1985, which is incorporated by reference herein, the Motion for Partial Summary Judgment should be denied, it is this ___ day of May, 1985

ORDERED, ADJUDGED AND DECREED That the Motion be, and the same hereby is, denied.

17 July 1985

/s/
J. Howe Brown, Judge

WE ASK FOR THIS:

/s/
David H. Cox
Jackson & Campbell, P.C.
1008 N. Randoph Street
Suite 104
Arlington, Virginia 22201
(703) 522-1330

Attorneys for Defendants
Charles M. Anderson, Mitsuko Anderson,
and Charles M. Anderson, t/a A.A. Eng'g

SEEN AND OBJECTIONS NOTED:

/s/ Michael L. Houliston

4510 Old Columbia Pike
Annandale, Virignia 22003
(703) 354-2727

Attorney for Plaintff
Smitty's Lumberteria, Inc.

Nineteenth Judicial circuit of Virginia
Fairfax County Judicial Center

May 16, 1985

Michel L. Houliston, Esq.
Marshall H. Brooks, Esq
William L. Schmidt, Esq
John H. M. Yen
Pearl Ko Yen
David H. Cox, Esq.

Re: Smitty Lumberteria, Inc. v.
Charles M. Anderson, et al.
Chancery No. 90299

Gentlemen:

This matter comes before me on Complainant's Motion for Summary Judgment on a Bill to Enforce a Mechanic's Lien. In support of this Motion, Complainant asserts that partial summary judgment is appropriate because it is uncontested that Defendants Charles M. and Mitsuko Anderson are owners of the subject premises; received notice of Complainant's claim accompanied by a verified accounting; and have acknowledged that the partial value of the materials furnished is $3,438.80. In opposition to

Complainant's Motion, Defendants Charles M. and Mitsuko Anderson argue that the lien is unenforceable against property held by them as tenants by the entirety because only Defendant Charles M. Anderson contracted for the materials upon which the lien is based. The named Defendants also assert that partial summary judgment is precluded at this point because service of process has not been made on all of the Defendants. After considering the facts of the case, the applicable law, and the arguments of Counsel, it is this Court's decision that the Complainant's Motion be denied.

Virginia code section 43.1 et seq. the Mechanic's Lien Statute, has been construed to authorize mechanic's liens only upon the interest or estate in the land of the person requiring or authorizing the work. Feuchtenberger v. Williamson, Carroll & Saunders, 137 Va. 578, (1923). If, as De-

fendants assert, only Defendant Charles M. Anderson authorized the materials underlying the mechanic's lien at issue in this litigation, Defendant Mitsuko Anderson's undivided interest in the property can not be affected by the lien. This is because "where a tenancy by the entirety in the fee simple is once created the property is completely immune from the claims of creditors against either husband or wife alone." Vasilion v. Vasilion, 192 Va. 735, 740 (1951). See also Freeman contracting company v. Lefferdink, 419 S.W.2d 266 (Mo. 1967) (where property is held by husband and wife as tenants by the entirety, neither by their own individual act can subject property to mechanic's lien); H & B Company of Statesville v. Hammond, 195 S.E.2d 58 (N.C. 1973) (where property against which claim of lien for materials isfiled is owned by husband and wife as tenants by entireties, plaintiff is not entitled to have lien enforced

against the property if wife was not a party to the contract pursuant to which materials were furnished). Because the issues of whether Mitsuko Anderson expressly authorized the purchase of materials, utilized Charles M. Anderson as her agent in this matter, or is otherwise estopped by her conduct from contesting the lien involve questions of fact to be determined at trial, summary judgment is not available to the Complainant at this time.

For the reasons stated in this opinion letter, and because there is a question regarding proper service on all of the Defendants in this action, Complainant's Motion for Partial Summary Judgment is denied. Counsel for Defendants Charles M. Anderson t/a A.A. Engineering, Charles M. Anderson, individually and Mitsuko Anderson shall prepare an appropriate order and submit it to Counsel for complainant for approval as to

form.

Very truly yours,

/s/
J. Howe Brown

Va. Code §54-113

"...(2) "General contractor" or "subcontractor" shall mean any person, firm, association, or corporation that for a fixed price...contracts for performing...improvement of any building or structure permanently annexed to real property,...owned ...by another person or any other improvements to such real property..."

Va. Code §54-128

"Necessity for license and certificate of registration. It shall be unalwful for any person to engage in, or offer to engage in general contracting or subcontracting in this State, unless he has been duly licensed and issued a certificate of registration under the provisions of this chapter; however, the issuance of such certificate shall not entitle the holder to engage in any activity for which a special license is required by law, except

as provided in §54-145.2."

Va. Code §54-142

"Penalty for violation of chapter. Any person not being duly authorized who shall contract for or bid upon the construction, removal, repair or other improvements to or upon real property witout having first complied with the provisions hereof,... shall be deemed guilty of a misdemeanor. ..."Provided that no person shall be entitled to assert this section as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of this section." (emphasis added)

Fairfax County, Virginia Ordinance Business, Professional and Occupational License Tax, Chap 4, Article VII, Div.1

"Section 4-7-14. License required; penalty for failure to comply with Article.

(a) It shall be unlawful and constitute a misdemeanor for any person to conduct a business, or to engage in a profession, trade or occupation without a license under the provisions of this Article."

Virginia Supreme Court Rules

Rule 5:11(d)

"...Within ten days after the notice of objection is filed with the clerk of the trial court, the judge shall: (1) overrule the objection; (2) make any corrections that he deems necessary; (3) include any accurate additions to make the record complete; (4) certify the manner in which the record is incomplete; and (5) sign the transcript or written statement. ..."

(emphasis added)